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On Rocks and Hard Places

DURING THEIR TRAINING, physicians study human biology and come to a degree of understanding of the human mind and body within the framework of biologic law in the natural world. There has been enormous progress in our degree of understanding, and, indeed, bioscience has been the foundation upon which modern medicine has been built. As this understanding has increased and the technology to apply it has advanced, medical care has become much more complex and costly, with results, to be sure, that are often spectacular. As interest in health and health care has grown, much of the new knowledge and technology has entered into the public consciousness, if not the public domain. This public interest has been intensified by concern and even alarm over rapidly rising costs. Because of this, third parties who pay the bills in both the public and private sectors have become increasingly involved in many aspects of health care delivery. A turning point that began the present era was passage of the Medicare law in 1965, and third party involvement in patient care has been progressing ever since.

With the entry of these third parties, new expectations were introduced into patient care and health care delivery. Whereas physicians, by reason of their training, considered medical practice and patient care in terms of their understanding of biologic laws of nature as applied to health and illness, this was not so much the case with the new third parties, whose motives were based largely, though certainly not entirely, on their concern with economic realities. They soon began to introduce and apply the business and legal expertise of society to health care by fostering economic competition, enacting legislation to try to control costs, introducing administrative regulation, and indulging in litigation.

So it comes about that there are now two standards or systems at work in health care that are in fundamental conflict. The biologic system is one created by nature and operates with its own natural laws. These are expressed in terms

of probabilities, and these probabilities are always accompanied by possibilities that are more or less probable but nevertheless equally real. Much of what is done in medical practice is determined by a physician's assessment of the probabilities and possibilities inherent in a given situation. This biologic fact of life is not readily recognized by the legal system. Laws created by society are artificial rather than natural. Yet they must be respected and obeyed in a human society governed by law.

The differences come into focus especially when there is a medical injury accompanied by litigation. The legal system assumes that the injury should not have happened, but since it did, it seeks to affix blame and punishment and to give compensation to the aggrieved party. The trial is public, conducted with attorneys for the plaintiff and defendant jousting with one another in court, using their wits and knowledge of the rules of law created by humans as their weapons. The facts of the case are sought but used selectively as deemed best for the cause of prosecution or defense. Right or wrong is decided in light of whether or not there is compliance with more or less arbitrary rules established through legislation or by the courts. It is seldom recognized that guilt or innocence may exist in terms of the probabilities inherent in the biologic law that governs patient care.

The biologic approach to an unfortunate medical happening is quite different. The approach is "no-fault." True to bioscience, it tries to get at the full truth of what really happened and why it happened and then to use this information positively with the view of gaining experience and preventing an unfortunate event from being repeated. The focus is on getting to the truth, wherever it may lie, but if there was genuine wrongdoing, it is understood that whatever blame, punishment, and compensation are appropriate should be meted out.

The art and science of medicine clearly lie within the realm of biologic law, but practice must respond to legal as well as biologic standards. Physicians in daily practice cannot escape either rule. Their patients are governed by biologic law in their sickness and their health. Medical practice is increasingly governed by societal law and regulation. It is not surprising that physicians sometimes find themselves between rocks and hard places when the two systems conflict, as is often evident when a medical practice issue involving an untoward outcome is being adjudicated in the courts. But there may be a ray of hope. It was only during the last century that the fundamentally biologic nature of humans was finally recognized. The inescapable consequence—that human society itself is therefore fundamentally biologic in nature and behavior and subject to biologic law—has yet to be similarly recognized. Progress is slow, but sooner or later there has to be light at the end of the tunnel. In the meantime there will be many rocks and many hard places in a physician's practice.

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